

Swim England North East Limited

A Company Limited by Guarantee

Company No. 12215986

Incorporated 19 September 2019

ARTICLES OF ASSOCIATION

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The Companies Act 2006

Articles of Association of

SWIM ENGLAND NORTH EAST LIMITED

*A Company Limited by Guarantee
& not having a share capital*

PART 1 : OBJECTS, POWERS & NOT-FOR-PROFIT STATUS

1. Objects

The objects of the Company are to encourage and assist people to learn how to swim, to take part in aquatic activities and sports, and to enjoy the water safely. In pursuing its objects, the Company shall—

- (a) support and carry on the aims and objects of the charity *The Amateur Swimming Association (Swim England) Limited*, charity number 1175603 (referred to in this document as “the ASA”);
- (b) at all times obey and enforce the laws, rules, resolutions and rulings of the ASA;
- (c) ensure as far as practicable that affiliated clubs and their members treat everyone equally regardless of their gender, colour, creed, disability, nationality and sexuality;
- (d) ensure as far as practicable that affiliated clubs and their members recognise that the welfare of children and vulnerable adults is the responsibility of everyone and that these children and vulnerable adults have a right to be safe and protected at all times;
- (e) produce, maintain and implement such Business Development and other plans based on strategic criteria set by the ASA and in such a form as the ASA may from time to time require;
- (f) administer the procedures for clubs as defined in ASA regulations, including any necessary fee collection;
- (g) administer the procedures for associations, bodies and organisations to affiliate to the Company, including any necessary fee collection.
- (h) administer such procedures as the ASA shall from time to time direct in order to enable individual club members to be members of the ASA;
- (i) administer such procedures as the ASA and the Company shall from time to time decide to establish and maintain County Associations to participate in the governance, administration and delivery of aquatic sports within the Area of Benefit.

2. Area of Benefit

The Company shall act as the North East Region of the ASA, its Area of Benefit comprising the Counties of Northumberland, Durham, Yorkshire, and those parts of Lincolnshire covered by the Unitary Authorities of North East Lincolnshire and North Lincolnshire.

3. Powers

The Company has the power to do anything which is incidental or conducive to the furtherance of its objects, including—

- (a) to seek and apply for funds, and to receive donations, gifts, endowments, sponsorship fees, subscriptions and legacies from persons wishing to support the Company's objects;
- (b) to borrow or raise or secure the payment of any money for the purposes of or in connection with the Company's objects, and to mortgage or charge any part of the Company's property as security for borrowed money.

4. Not-for-profit status: application of income and property

The income and property of the Company shall be applied solely towards the promotion of its objects, and no portion shall be transferred directly or indirectly by way of dividend, bonus, or otherwise by way of profit to any member or Director of the Company, provided that nothing shall prevent any payment in good faith by the Company—

- (a) as repayment of reasonable out-of-pocket expenses incurred by any Director whilst acting on behalf of the Company;
- (b) of interest on money lent by any member or Director of the Company at a rate per annum not exceeding 2 per cent above the base lending rate of the Company's bankers for the time being;
- (c) of reasonable and proper rent for premises demised or let by any member or Director of the Company;
- (d) of grants, loans, donations or any other kind of financial assistance to a member of the Company, or to any organisation or agency which is represented on the Board of Directors, provided that any such payment is in furtherance of the Company's objects.

5. Not-for-profit status: dissolution

If the Company is dissolved, any assets remaining after the satisfaction of its debts and liabilities shall not be distributed amongst the members but instead must be transferred to the ASA or, if that should not be possible, then such residual assets shall be transferred—

- (a) to one or more not-profit-distributing institutions with objects similar to or compatible with those of the Company, including clubs affiliated to the Company if they qualify, or
- (b) as a donation for charitable purposes,

as may be decided by the members at or before the time of dissolution.

PART 2 : LIMITATION OF LIABILITY

6. Limit of members' liability

- (a) The liability of the members is limited.
- (b) Every member guarantees, if the Company is dissolved while he or she is a member or within one year after ceasing to be a member, to pay up to one pound sterling (£1) towards the costs of dissolution and the liabilities incurred by the Company while the guarantor was a member.

PART 3 : AFFILIATION & MEMBERSHIP

7. Affiliation

Eligible clubs, organisations and associations (referred to generally as “clubs”) may apply for affiliation to the Company. Any club applying for affiliation must submit its application, including a copy of its constitution, to the Company. The club's constitution shall conform to any requirements of the ASA with regard to affiliated club constitutions. In deciding whether to grant affiliation the Directors will consider the application and the club's constitution against such criteria as may have been approved by the ASA Board of trustees, and the following regulations shall apply—

- (a) Affiliation to the Company will include the requirement for the club to affiliate to one of the County Associations recognised by the Company, which may involve an additional fee.
- (b) Any club being refused affiliation will have a right of appeal to the ASA Board of Trustees whose decision will be final and binding on all parties.
- (c) In order to remain affiliated, a club's constitution must continue to conform to any criteria issued by the ASA from time to time.

- (d) Any proposed changes to an affiliated club's constitution must be submitted to the Company and approved by the Directors before it becomes operational. Subsequent to approval, the club may be requested to submit a complete up-to-date constitution.

8. Admission of members ("the Council")

The membership of the Company shall be known as "the Council" and shall comprise—

- (a) one person nominated by each club that is affiliated to the Company;
- (b) two persons appointed by each County Association that is recognised by the Company.

(Local Associations and Schools' Swimming Associations shall not have the right to nominate a member of the Company.)

9. Nominees of affiliated clubs

A member who is a nominee of an affiliated club must be a member of the club that he or she represents. Affiliated clubs shall advise the Company in writing of the identity of their nominee, and of any change in appointment.

10. Appointment of President and Vice-President

- (a) A President and a Vice-President of the region shall be appointed by the Board of Directors. The Directors shall in each year elect, from nominations received, a Vice-President who in the year following shall be installed as the President of the region.
- (b) The President and Vice-President shall be eligible to attend and speak at all meetings of the Company and of the Directors but they shall not hold voting rights.

11. Register of Members

The Company shall keep an up-to-date Register of Members containing the name and contact details of every member, the date on which they became a member and the date on which they ceased to be a member, and – where a member is a nominee of an affiliated club – a note of the club that nominated him or her.

12. Termination of membership

A member shall cease to be a member if that person—

- (a) resigns in writing to the Company;
- (b) is the nominee of a club which ceases to be affiliated to the Company;
- (c) is the nominee of a club which replaces him or her as their nominee;
- (d) was appointed by a County Association which replaces him or her as their appointee, or which ceases to be recognised by the Company;
- (e) ceases to hold the position of President or Vice-President;
- (f) is expelled by the Directors for conduct prejudicial to the Company, provided that any member whose expulsion is proposed shall have the right to make representation to the meeting at which the decision is to be made.

PART 4 : DIRECTORS

13. Board of Directors

The Company shall have a Board of Directors made up as follows—

- (a) one person nominated by the Northumberland and Durham Counties Swimming Association;
- (b) two persons nominated by the Yorkshire Swimming Association;
- (c) up to five persons elected by and from the membership of the Company;
- (d) up to four other persons co-opted by the Board for their skills and experience.

14. Nomination and election of Directors

The Directors shall from time to time determine procedures for—

- (a) the nomination of Directors under clauses (a) and (b) above, and
- (b) the election of Directors under clause (c) above, which may include elections held at the Annual General Meeting (“AGM”), or a postal ballot of the members conducted prior to the AGM, or any other method considered to be effective and democratic, and
- (c) recruiting directors under clause (d) above.

15. Retirement cycle

- (a) At every Annual General Meeting one-third of the Directors shall retire from office. In the event that the number is not divisible by three, then the proportion to retire shall be that which is nearest to one-third.
- (b) The Directors to retire shall be those longest in office since they were last elected, appointed or co-opted. Where there are Directors who have been in office for the same length of time then, in the absence of agreement, those to retire shall be selected by lot.
- (c) A retiring Director is eligible for re-election or re-appointment, provided that any Director who has served nine consecutive years shall not be eligible for re-appointment or re-election until a period of at least four years has elapsed.

16. Excluded persons

Under no circumstances shall any of the following serve as a Director—

- (a) a person who is under 16 years of age;
- (b) a person who is an undischarged bankrupt or who has made a composition with his or her creditors generally in satisfaction of his or her debts; or
- (c) a person who is otherwise disqualified by law from serving as a company director.

17. Termination of a Director’s appointment

The office of a Director shall be immediately vacated if he or she—

- (a) resigns his or her office in writing to the Company; or
- (b) ceases to be a member of the Company; or
- (c) becomes bankrupt, or makes a composition with his or her creditors generally, or is otherwise disqualified by law from serving as a director of a company; or
- (d) is removed from office by resolution of the Company at a General Meeting in accordance with sections 168 and 169 of the Act.

18. Casual vacancies

Any vacancy that occurs may be filled by a majority decision of the remaining Directors. The appointment will be for the remainder of the term that would have been served by the Director who is being replaced.

19. Appointment of a Chair and other officers

The Directors shall appoint from their number officers to include a Chair, Vice-Chair and Treasurer of the Company. Officers shall be appointed for such term of office as the Directors may determine, and the Directors may at any time remove someone from office.

DIRECTORS' POWERS AND DUTIES

20. Directors' general authority

- (a) Subject to the Articles, the Directors are responsible for the management of the Company's business, for which purpose they may exercise all the powers of the Company.
- (b) Without prejudice to their general powers, the Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking and property, or any part of them, and to issue debentures and other securities whether outright or as security for any debt, liability or obligation of the Company.

21. Directors' general authority to delegate functions

The Directors may delegate any of their functions to any person or committee they think fit.

22. Committees of Directors

- (a) Two or more Directors are a "committee" if the Directors have—
 - i. delegated any of the Directors' functions to them; and
 - ii. indicated that they should act together in relation to that function.
- (b) The provisions of the Articles about how the Directors take decisions shall apply, as far as possible, to the taking of decisions by committees.
- (c) The Directors may impose conditions when delegating, including the conditions that—
 - i. the relevant powers are to be exercised exclusively by the committee to whom they delegate;
 - ii. no expenditure may be incurred on behalf of the Company except in accordance with a budget previously agreed by the Directors, and no committee may bind the Company to any contract without the approval of the Directors.

DECISION-MAKING BY DIRECTORS

23. Directors to take decisions collectively

The general rule about decision-making by Directors is that any decision of the Directors must be either a *majority decision* taken at a meeting or a *unanimous decision* taken in accordance with the following Article.

24. Unanimous decisions

A decision of the Directors may be taken without a meeting or discussion if all the Directors indicate to each other, by any means, that they share a common view on a matter.

25. Calling a Directors' meeting

Any Director may call a Directors' meeting by giving reasonable notice of the meeting to the Directors, subject to the following—

- (a) Notice of any Directors' meeting must indicate:
 - i. its proposed date and time;
 - ii. where it is to take place; and
 - iii. if it is anticipated that Directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
- (b) Notice of a Directors' meeting must be given to each Director, but need not be in writing.

26. Participation in Directors' meetings

- (a) Subject to the Articles, Directors participate in a Directors' meeting, or part of a Directors' meeting, when—
 - i. the meeting has been called and takes place in accordance with the Articles, and
 - ii. they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- (b) In determining whether Directors are participating in a Directors' meeting, it is irrelevant where any Director is or how they communicate with each other.
- (c) If all the Directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

27. Quorum for Directors' meetings

- (a) At a Directors' meeting, unless a quorum is participating, no proposal is to be voted on except a proposal to call another meeting.
- (b) Unless otherwise agreed by the Directors, the quorum for Directors' meetings shall be one-half of the Directors.

28. Chairing of Directors' meetings

The Chair of the Directors shall preside at all meetings of the Directors, but if he or she is not present ten minutes after the time set for the commencement of the meeting, or if there is no Chair, the Directors present shall choose one of their number to chair the meeting before any other business is transacted.

29. Voting at Directors' meetings

Questions arising at any meetings shall be decided by a majority of votes, each Director having one vote on each question to be decided. In the case of an equality of votes, the person chairing the meeting shall not have a casting vote and the resolution shall be lost.

30. Conflicts of interest

- (a) Directors must avoid situations in which they have, or could have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company. This applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the Company could take advantage of the property, information or opportunity).
- (b) Where a Director is in any way, directly or indirectly, interested in a transaction or arrangement that has been entered into by the Company, she or he must declare the nature and extent of the interest to the other Directors in writing or at a Directors' meeting.
- (c) Where a Director is interested in a transaction or arrangement with the Company, the other Directors may require him or her to be absent from any part of a meeting where the matter is being discussed or voted on.

31. Validity of decisions and acts

All acts done by any meeting of the Directors or by any person acting as a Director shall, even if it is afterwards discovered that there was some defect in the appointment of any person acting as such, or that they or any of them were disqualified, be as valid as if every person had been duly appointed and was qualified to be a Director.

PART 5 : DECISION-MAKING BY MEMBERS

GENERAL MEETINGS

32. Annual General Meeting

- (a) The Company shall in each calendar year hold a General Meeting as its Annual General Meeting (AGM) and shall specify the meeting as such in the notices calling it. Every AGM shall be held not more than fifteen months after the holding of the last preceding AGM.
- (b) The business of an AGM shall comprise—
 - i. the consideration of the Report and Accounts presented by the Directors;
 - ii. the election or re-election of Directors, or the announcement of the results of elections if these have already been conducted;
 - iii. the appointment or re-appointment of the Company's auditors;
 - iv. such other business as may have been specified in the notices calling the meeting.

33. Other General Meetings

The Directors may whenever they think fit convene a General Meeting in addition to the AGM, and a General Meeting shall be convened if demanded by 5% of the Full Members of the Company.

NOTICES OF GENERAL MEETINGS

34. Delivery of notices

- (a) Any General Meeting shall be called by at least 14 clear days' notice. However, a General Meeting may be called with shorter notice if it is agreed by at least 90 per cent of those entitled to attend and vote.
- (b) Notice of every General Meeting shall be given in writing to every member and Director of the Company, and to the auditors (if any), and to such other persons who are entitled to receive notice, and may be given in any way provided for by the Act.
- (c) Notice shall be deemed to have been served 48 hours after being sent by electronic means or by post or delivered by hand to the member's address.

35. Content of notices

- (a) Notice of all meetings shall specify the exact time and place of the meeting.
- (b) In the case of a General Meeting which is to consider a Special Resolution or a resolution to remove a Director or the auditor, such resolution shall be specified in the notices calling that meeting; and in the case of all other General Meetings the general nature of the business to be raised shall be specified.
- (c) The notice of every General Meeting must advise members and members' representatives of their right to appoint a proxy, and of the proxy's right to attend, speak and vote at the meeting.

36. Errors

The accidental omission to give notice of a meeting to or non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate proceedings at that meeting.

PROCEEDINGS AT GENERAL MEETINGS

37. Quorum

- (a) No business shall be transacted at a General Meeting unless a quorum is present in person or by proxy. Unless otherwise decided by the Company, a quorum shall be 20 members entitled to vote.

- (b) If half an hour after the time appointed for the meeting a quorum is not present, it shall stand adjourned until such time and place as the Directors may decide, and all members shall be given such notice as is practicable of the time, date and place of such an adjourned meeting. The members present at a meeting so adjourned shall constitute a quorum for that meeting only.

38. Chairing of General Meetings

The Chair of the Board of Directors shall preside at all general meetings of the Company, but if he or she is not present ten minutes after the scheduled start time of the meeting, or if no-one holds the position of Chair, the Directors present shall choose one of their number to chair the meeting, whose function shall be to conduct the business of the meeting in an orderly manner.

39. Adjournment

The person chairing the meeting may (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for twenty-one days or more, notice of the adjourned meeting shall be given as in the case of the original meeting. Otherwise it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

VOTING AT GENERAL MEETINGS

40. Voting: general

- (a) Decisions at General Meetings shall be made by passing resolutions—
 - i. Decisions involving an alteration to the Articles of the Company, or to wind up the Company, and other decisions so required from time to time by statute shall be made by a Special Resolution. A Special Resolution is one passed by a majority of not less than 75% of votes cast.
 - ii. All other decisions shall be made by Ordinary Resolution requiring a simple majority vote of votes cast.
- (b) One vote may be cast by or on behalf of every member on each question to be decided at a General Meeting.
- (c) In the case of an equality of votes, whether on a show of hands or on a ballot, the Chairman of the meeting shall not have a second or casting vote and the resolution shall be lost.

41. Show of hands / ballot votes

- (a) At any General Meeting a resolution put to the vote shall be decided on a show of hands unless a written ballot (or “poll”) is, before or on the declaration of the result of the show of hands, demanded by the chair or by at least two persons present and entitled to vote.
- (b) If a ballot is duly demanded it shall be taken at such time and in such a manner as the chair directs, and the result of the ballot shall be deemed to be the resolution of the meeting at which the ballot was demanded. The demand for a ballot may be withdrawn.
- (c) On a show of hands someone acting as a proxy shall have one vote. On a written ballot a proxy is entitled to cast all the votes he or she holds.

42. Proxy voting

- (a) Any member entitled to vote at a General Meeting but who cannot attend a meeting in person may appoint any other person to act as proxy for him or her by sending the Company a notice in writing (a “proxy notice”) which—
 - i. states the name and address of the member appointing the proxy;

- ii. identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed;
 - iii. is signed by the member who is appointing the proxy; and
 - iv. is delivered to the company in accordance with any instructions contained in the notice of the general meeting to which they relate.
- (b) The proxy notice may—
- i. specify that the proxy must vote this way or that on any particular resolution; or
 - ii. authorise the proxy to vote in accordance with his or her own judgement.

MEMBERS' WRITTEN RESOLUTIONS

43. Written resolutions

- (a) Any decision that may be made at a General Meeting of the Company may be made by written resolution, other than a decision to remove a Director or auditor before the expiry of their term of office.
- (b) A proposed written resolution shall be circulated to members and to the auditors in the same manner as notices for General Meetings. Members signify their approval of the resolution if they wish to vote for it, and need take no action if they wish to vote against.
- (c) The majorities required to pass a written resolution are as follow—
 - i. for an ordinary resolution, approval is required from a simple majority of the members;
 - ii. for a special resolution, approval is required from not less than 75% of the members.
- (d) The document indicating a member's approval of a written resolution may be sent to the Company as hard copy or in electronic form. A member's agreement to a written resolution, once signified, may not be revoked.
- (e) A written resolution lapses if the necessary number of approvals has not been received 28 days after the first day on which copies of the resolution were circulated to members.
- (f) A written resolution is passed as soon as the required majority of members have signified their agreement to it.

PART 6 : ADMINISTRATIVE ARRANGEMENTS

COMPANY SECRETARY

44. Appointment of Secretary

The Directors may appoint a Secretary of the Company upon such terms and conditions as they think fit; and any Secretary so appointed may be removed by them.

COMMUNICATION AND RECORDS

45. Means of communication to be used

Subject to the Articles, anything which is to be sent by or to the Company under the Articles may be sent in any way provided for by the Act.

46. Minutes

- (a) The Directors must keep minutes of all—
 - i. proceedings at general meetings of the Company;
 - ii. written resolutions passed by the Company;

- iii. meetings of the Directors and committees of Directors including—
 - the names of the Directors present at the meeting;
 - the decisions made at the meetings; and
 - where appropriate, the reasons for the decisions.

(b) Minutes of meetings shall be kept for a minimum of 10 years.

47. Accounts and reports

- (a) The Directors shall comply with the requirements of the Act and any other applicable law as to keeping financial records and preparing annual reports and accounts and sending them to the Registrar of Companies.
- (b) The Company must send a copy of its annual accounts and reports (no later than the date these are submitted to Companies House) to—
 - i. every member of the Company,
 - ii. every holder of the Company's debentures, and
 - iii. every Director and other person who is entitled to receive notice of general meetings.
- (c) Copies need not be sent to a person for whom the Company does not have a current address, nor to anyone who is not entitled to receive notices of general meetings of the Company.

DIRECTORS' INDEMNITY AND INSURANCE

48. Indemnity

The Company may indemnify any Director, auditor, or other officer of the Company against any liability incurred by him or her in that capacity to the extent permitted by sections 232 to 234 of the Act.

49. Insurance

- (a) The Directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant Director in respect of any relevant loss.
- (b) In this Article—
 - i. a "relevant Director" means any Director or former Director of the Company or an associated company,
 - ii. a "relevant loss" means any loss or liability which has been or may be incurred by a relevant Director in connection with that Director's duties or powers in relation to the Company, any associated company or any pension fund or employees' share scheme of the Company or associated company, and
 - iii. companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

REGULATIONS

50. Directors' power to make regulations

The Directors may from time to time make, adopt and amend such regulations in the form of bylaws, standing orders, secondary rules or otherwise as they may think fit for the management, conduct and regulation of the affairs of the Company and the proceedings and powers of the Directors and committees, provided that such regulations are not inconsistent with the Articles, and do not amount to an addition or alteration such as could only legally be made by an alteration to the Articles.

SCHEDULE : INTERPRETATIONS

51. Defined terms

In the Articles, unless the context requires otherwise—

“the Act” means the Companies Act 2006;

“Articles” means the Company’s Articles of Association;

“bankruptcy” includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy;

“the Company” means the company to which these Articles apply;

“Director” means a director of the Company, and includes any person occupying the position of director, by whatever name called;

“document” includes, unless otherwise specified, any document sent or supplied in electronic form;

“electronic form” has the meaning given in section 1168 of the Companies Act 2006;

“member” has the meaning given in section 112 of the Companies Act 2006;

“ordinary resolution” has the meaning given in section 282 of the Companies Act 2006;

“participate”, in relation to a Directors’ meeting, has the meaning given in Article 26;

“special resolution” has the meaning given in section 283 of the Companies Act 2006;

“subsidiary” has the meaning given in section 1159 of the Companies Act 2006; and

“writing” means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

Unless the context otherwise requires, other words or expressions contained in these Articles bear the same meaning as in the Companies Act 2006 as in force on the date when these Articles become binding on the Company.